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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6426 OF 1996

Adinath Genu Shinde ... Petitioner

V/s

1. The Education Officer,
   (Secondary), Zilla Parishad, Solapur;
2. The State of Maharashtra
3. The Secretary,
   Barshi Shikshan Prasarak Mandal,
   Barshi, Dist. Solapur.
4. Rambhau Vishwanath Bhadange. ... Respondents

Mr. S.G. Kudale for the petitioner.

Mr. R.M. Patne, A.G.P. for the respondent Nos. 1 & 2.

Mr. Ashok Tajane i/by Mr. G.S. Godbole for the Resp. No.4.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 6TH FEBRUARY, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.)

1. The present petition has been filed challenging the action of the respondent No.1 reverting the petitioner to the post of peon from the post of Laboratory Attendant and promoting the respondent No.4 to the post of Laboratory Attendant.

2. The petitioner was appointed in a school run by the respondent No.3 institution. On 1.10.1973 he had passed his S.S.C. and was appointed as a peon in the school known as the Barshi Technical High School (for short "the School"). The respondent No.4 was appointed in the School as a peon from 1.9.1973. However, he had not passed his S.S.C. examination. In 1983 when the post of Laboratory Attendant fell vacant, the petitioner was appointed to that post and worked from 1.2.1983 to 13.6.1993. The qualifications required of a person for being appointed to the post of Laboratory Attendant are that he should have studied upto the Pre-S.S.C. Class with Physics and Chemistry or General Science as a subject. It appears that the petitioner was asked to work as a peon from 3.3.1993 when the Science Classes of XI and XII Standard of the School were abolished. In 1995 when a vacancy to the post of Laboratory Attendant arose again, the petitioner was appointed to that post. A proposal was sent by the School to the respondent No.1 for approval of the petitioner’s appointment.

3. It appears that the respondent No.4 left the School and joined Moledina School in Pune from 23.7.1977 to 31.1.1999. Thereafter the respondent No.4 left Moledina High School and rejoined the service in the School run by the respondent No.3 institution. It was at that stage

that respondent No. 4 sought to be promoted to the post of Laboratory Attendant. Instead of approaching the the School Tribunal, respondent No.4 approached the Education Officer i.e. respondent No.1 to the petition. The Education Officer therefore did not grant approval to the appointment of the petitioner to the post of Laboratory Attendant as requested by the Barshi School and instead directed that respondent No.4 be promoted as a Laboratory Attendant. It is this order dated 16/17.8.1996 which has been challenged in the petition.

4. The learned advocate for the petitioner contends that once the petitioner was promoted and his posting as a Laboratory Attendant had been approved in 1983 itself, the respondent No.1 could not revoke his earlier order and direct that the 4th respondent should be appointed to the post of Laboratory Attendant. He submits that although the petitioner and the 4th respondent were qualified to be appointed to the post of Laboratory Attendant, in 1983 when the petitioner was appointed to that post, the respondent No.4 chose not to question the petitioner’s appointment. The learned advocate for the petitioner submits that the respondent No.4 was not entitled to the post of Laboratory Attendant as during the period from 1977 till 1999 he was working with Moledina High School in Pune. This averment contained

in the affidavit of the petitioner filed on 27.1.2006 has not been denied by the respondent No.4 inspite of several affidavits filed by him. The learned advocate, therefore, submits that there was a break in service of the respondent No.4 and he had lost his seniority over the petitioner once he left the school run by the respondent No.3 institution. He, therefore, contends that the impugned order is required to be set aside and the petitioner must be continued in the post of Laboratory Attendant with the approval being accorded to his appointment by the respondent No.1.

5. It is contended on behalf of the respondent No.4, that respondent No.4 was senior to the petitioner in service in the Barshi School as he had joined one month earlier than the petitioner. It is further pointed out that although the respondent No.4 had discontinued working with the Barshi School run by respondent No.3, his seniority was to be reckoned from the initial date of joining i.e. from 1.9.1973, under the rules applicable. It is then submitted that the respondent No.4 could not have challenged the appointment of the petitioner in 1983 to the post of Laboratory Attendant, although he was equally qualified, as he did not have the wherewithal to challenge the appointment. It was only when he returned to the Barshi School that he was

in a position to challenge the appointment and approval granted to the petitioner as a Laboratory Attendant.

6. The affidavit of the Education Officer who is the 1st respondent to this petition, does not disclose any reason as to why he directed the institution to appoint the respondent No.4 to the post of Laboratory Attendant. All that has been stated in various affidavits filed by the Education Officer is that both, the petitioner and the respondent No.4, were equally qualified in 1983 when the post of Laboratory Attendant was vacant and respondent No.4 being senior to the petitioner was entitled to be promoted to the post of Laboratory Attendant.

7. We are unable to accept the contentions of the respondents. Admittedly, respondent No.4 was senior to the petitioner by about one month when he was working in the Barshi Technical School run by the respondent No.3. He was equally qualified as the petitioner was to be appointed to the post of Laboratory Attendant when it became vacant in 1983. However, admittedly, the respondent No.4 was not in service of the Barshi Technical School in 1983 but was working with Moledina School in Pune. It is obvious that respondent No.4 would loose his seniority while working for a different

school. There is nothing on record to suggest that the Moledina School was run by the same institution, respondent No.3. In such circumstances, it is the petitioner who would be entitled to be appointed to the post of Laboratory Attendant. The respondent No.4, after returning to the Barshi Technical School from Moledina School, claimed to be senior in service by counting his seniority from the date of his initial appointment from 1.9.1973. There is nothing on record to indicate that the break in service did not affect his seniority. It is obvious therefore that when he rejoined the Barshi Technical School, he was junior to the petitioner, having lost his earlier seniority.

8. Apart from this, when the petitioner was appointed to the post of Laboratory Attendant and his appointment was approved by the respondent No.1 in 1983, the respondent No.4 did not choose to challenge the petitioner’s appointment, instead, he remained silent for more than 10 years and it was only when he returned to the Barshi Technical School that he awoke from his slumber and challenged the petitioner’s posting as a Laboratory Attendant. There is an inordinate delay on the part of respondent No.4 in challenging the posting of the petitioner as a Laboratory Attendant which must be deprecated. We are, therefore, of the opinion that

the impugned order must be set aside. Undisputedly, the petitioner is qualified for the post of Laboratory Attendant and that the Education Officer had approved his appointment to the post of Laboratory Attendant on 16.8.1983. We are unable to understand as to how when petitioner's posting had been approved in 1983, the respondent No.1 could revoke the approval. It is undisputedly true that the petitioner was reverted in 1993 to the post of peon after the closure of Class XI and XII of the school. In the year 1995-96, there was again a vacancy in the post of Laboratory Attendant and the petitioner was appointed to that post. It was at that stage that the respondent No.4 took exception to the petitioner's appointment. By this time, however, the petitioner had become senior to the respondent No.4 and, therefore, the respondent No.3 rightly appointed the petitioner to that post.

9. Hence, the writ petition is allowed. Rule made absolute.

(SMT.NISHITA MHATRE, J.) (S.B.MHASE, J.)